

HCS HJR 44 -- JUDICIAL COMMISSIONS

SPONSOR: Smith, 150 (Cox)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Judicial Reform by a vote of 9 to 5.

Upon voter approval, this proposed constitutional amendment changes the laws regarding the Appellate Judicial Commission and circuit judicial commissions. The resolution increases from three to five the number of judicial candidates nominated by the Nonpartisan Judicial Commission for a vacancy in the office of judge of specified courts from which the Governor may make an appointment. The Governor may veto the first list of candidates submitted by notifying the commission within 60 days. If the panel of judicial candidates is vetoed, the commission must submit a second list of nominees. The Governor must choose a candidate from the first or second list within 60 days or the commission must appoint one of the nominees from the second list.

The resolution also changes the composition of nonpartisan judicial commissions. The membership of the Appellate Judicial Commission is changed to consist of:

- (1) Three members of the Missouri Bar, each a resident from a different court of appeals district, selected by the members of the Missouri Bar from each district;
- (2) Three citizens who are not members of the bar nor the spouse of a bar member, each a resident from a different court of appeals district, appointed by the Governor;
- (3) One citizen who is not a member or the spouse of a bar member, from anywhere in the state, appointed by the Governor;
- (4) One member from anywhere in the state appointed by the President Pro Tem of the Senate; and
- (5) One member from anywhere in the state appointed by the Speaker of the House of Representatives.

The membership of a circuit judicial commission is revised to consist of two attorney members elected by the Missouri Bar members residing in the judicial circuit and three citizens residing in the judicial circuit appointed by the Governor who are not bar members nor the spouse of a bar member. The term of all members of the judicial commissions will be four years.

Each appointment to the Appellate Judicial Commission and circuit judicial commissions, except for the members appointed by the

President Pro Tem and the Speaker, is subject to the advice and consent of the Senate within 30 legislative days of the appointment by the Governor. A governor first taking office has the authority to remove, within 60 days of taking the oath of office, any member appointed by a preceding governor, but not the members elected by Missouri Bar members, and to appoint a replacement.

The judicial selection process must promote openness and public access. All hearings, debates, and votes of the commissions must be open to the public and to the press with no less than 72 hours public notice given before each meeting. The list of applicants for any judicial vacancy must be a public record with their names posted on the website of the Missouri Supreme Court, and all information available to the respective commissions on the judicial candidates must be made available to the Governor. Every applicant nominated will be subject to a background check, including a criminal check, which will not be a public record, but available only to the commissions and the Governor. Commission deliberations regarding the final list of nominees may be closed.

The resolution transfers the responsibility for the approval of expenses incurred in the administration of the judicial selection plan from the Missouri Supreme Court to the Commissioner of the Office of Administration.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of an income of \$0 or a cost of More than \$7,000,000 in FY 2013, an income of \$0 in FY 2014, and an income of \$0 in FY 2015. No impact on Other State Funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the Missouri Bar has too much influence over judicial appointments and the influence is anti-democratic because it outweighs the influence of elected officials such as the Governor. The current process is elitist and does not offer the Governor enough choice in candidates. There are few checks and balances in the Missouri Plan which does not implement the separation of powers principle of giving the different branches of government influence over judicial selections.

Testifying for the bill were Representative Cox; and Concerned Women for America.

OPPOSERS: Those who oppose the bill say that the Missouri Plan is generally viewed as effective and has been adopted in many states. The bill violates local control principles by allowing the Governor and Senate to select circuit judges. The existing plan is a non-political process that results in less "activist"

judges than the federal system.

Testifying against the bill were Missouri Bar Association;
Missouri Organization of Defense Lawyers; Missouri Association of
Trial Attorneys; ACLU; and Missouri School Boards Association.